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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

COMMISSIONERS

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AUG 31 2011

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

[Signature]

JOHN E. DOUGHERTY and
WILLIAM NICHOLAS KOPKO,

COMPLAINANTS,

DOCKET NO. W-04254A-11-0323

V.

MONTEZUMA RIMROCK WATER
COMPANY, LLC,

RESPONDENT.

PROCEDURAL ORDER

BY THE COMMISSION:

On August 23, 2011, John E. Dougherty and William Nicholas Kopko (jointly "Complainants") jointly filed with the Arizona Corporation Commission ("Commission") a Formal Complaint ("Complaint") against Montezuma Rimrock Water Company, LLC ("Montezuma Rimrock"), in which the Complainants make 14 separate Allegations against Montezuma Rimrock and request that the Commission schedule an Order to Show Cause ("OSC") Hearing to consider revoking Montezuma Rimrock's Certificate of Convenience and Necessity ("CC&N") and that the OSC hearing be held before the Commission considers Montezuma Rimrock's emergency rate case application, filed in Docket No. W-04254A-11-0296 ("Emergency Rate Case Docket").

On August 24, 2011, a copy of the Complaint in this docket was sent to Montezuma Rimrock, with a letter instructing Montezuma Rimrock to respond within 20 days of the date receipt of the Complaint is acknowledged.

On August 30, 2011, Complainants filed two additional Exhibits to the Complaint.

Mr. Dougherty is an intervenor in the Emergency Rate Case Docket and in another docket in which the Commission has reopened Decision No. 71317 (October 30, 2009) under A.R.S. § 40-252

1 to determine whether to modify the decision concerning financing approval and related provisions
2 (“40-252 Docket”).¹

3 In the Emergency Rate Case Docket, a procedural schedule has been established that includes
4 a hearing to be held on September 22, 2011. In the 40-252 Docket, Montezuma Rimrock has a
5 substantive filing due on September 22, 2011.

6 On August 31, 2011, in the 40-252 Docket, Mr. Dougherty filed Notice of having filed the
7 Complaint and a Motion to Stay the proceedings in the 40-252 Docket. In the Motion to Stay, Mr.
8 Dougherty asserts that the Complaint includes numerous allegations supported by substantial
9 documentation that Montezuma Rimrock has filed materially false and misleading financial
10 statements in Annual Reports, improperly withheld information during a 2009 Staff audit in the 40-
11 252 Docket, and made a false statement on its 2009 WIFA loan application, among other things. Mr.
12 Dougherty asserts that, in light of the allegations in the Complaint, all proceedings in the 40-252
13 Docket should be stayed until the allegations raised in the Complaint have been fully answered by
14 Montezuma Rimrock. Mr. Dougherty filed a substantially similar Notice and Motion to Stay in the
15 Emergency Rate Case Docket.

16 On August 31, 2011, in the Emergency Rate Case Docket, Montezuma Rimrock filed a
17 Motion for Protective Order, along with a separate Certificate of Counsel in Support of Motion for
18 Protective Order, requesting that the Commission quash or severely limit the scope of Mr.
19 Dougherty’s data requests so as to protect Montezuma Rimrock from annoyance, embarrassment,
20 oppression, or undue burden or expense.

21 In light of the issues raised by Mr. Dougherty in his Notice and Motion to Stay in the 40-252
22 Docket and in the Emergency Rate Case Docket and Montezuma Rimrock’s Motion for Protective
23 Order, it is now appropriate to schedule a joint procedural conference for this docket, the Emergency
24 Rate Case Docket, and the 40-252 Docket, at which the parties shall be prepared to discuss the
25 Motion to Stay filed in the 40-252 Docket, the Motion to Stay filed in the Emergency Rate Case

26
27 ¹ The 40-252 Docket is Docket Nos. W-04254A-08-0361 et al. The Commission reopened the Decision in response to
28 a Montezuma Rimrock request for modification of the decision to allow it to obtain financing for arsenic treatment
facilities through a loan from a private financial institution rather than through the Arizona Water Infrastructure Finance
Authority (“WIFA”) loan authorized in the Decision.

1 Docket, the Motion for Protective Order filed in the Emergency Rate Case Docket, how the three
2 dockets should proceed, whether any or all of the three dockets should be consolidated, and any other
3 appropriate issues.

4 IT IS THEREFORE ORDERED that a **joint procedural conference shall be held in this**
5 **docket, the Emergency Rate Case Docket, and the 40-252 Docket on September 13, 2011, at**
6 **10:00 a.m., in Hearing Room No. 1** at the Commission's offices at 1200 West Washington Street in
7 Phoenix, Arizona 85007.

8 IT IS FURTHER ORDERED that **all parties shall appear in person at the procedural**
9 **conference.**

10 IT IS FURTHER ORDERED that the **parties shall be prepared to discuss** the Motion to
11 Stay filed in the 40-252 Docket, the Motion to Stay filed in the Emergency Rate Case Docket, the
12 Motion for Protective Order filed in the Emergency Rate Case Docket, how the three dockets should
13 proceed, whether any or all of the three dockets should be consolidated, and any other appropriate
14 issues.

15 IT IS FURTHER ORDERED that **all parties must comply with Arizona Supreme Court**
16 **Rules 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac***
17 ***vice.*²**

18 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
19 Communications) applies to this proceeding and shall remain in effect until the Commission's
20 Decision in this matter is final and non-appealable.

21 IT IS FURTHER ORDERED that any motion filed in this matter that is not ruled upon by the
22 Commission within 20 calendar days of the filing date of the motion shall be deemed denied.

23 IT IS FURTHER ORDERED that any response to a motion shall be filed within five calendar
24 days of the filing date of the motion.

25 IT IS FURTHER ORDERED that any reply shall be filed within five calendar days of the
26 filing date of the response.

27 _____
28 ² For example, an individual party who is not a licensed Arizona attorney generally cannot represent another individual who is also a party in a Commission proceeding.

1 IT IS FURTHER ORDERED that **discovery** shall be as permitted by law and the rules and
2 regulations of the Commission, except that any objection to discovery requests shall be made within
3 7 calendar days of receipt,³ and responses to discovery requests shall be made within 10 calendar
4 days of receipt. The response time may be extended by mutual agreement of the parties involved if
5 the request requires an extensive compilation effort.

6 IT IS FURTHER ORDERED that for discovery requests, objections, and answers, if a
7 receiving party requests service to be made electronically, and the sending party has the technical
8 capability to provide service electronically, service to that party shall be made electronically.

9 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel
10 discovery, any party seeking resolution of a **discovery dispute** may telephonically contact the
11 Commission's Hearing Division to request that a procedural conference be scheduled to resolve the
12 discovery dispute;⁴ that upon such a request, a procedural conference will be convened as soon as
13 practicable; and that the party making such a request shall forthwith contact all other parties to advise
14 them of the date and time of the procedural conference and shall at the procedural conference provide
15 a statement confirming that the other parties were notified of the date and time.

16 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
17 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
18 Supreme Court Rule 42). Representation before the Commission includes appearing at all hearings,
19 procedural conferences, and Open Meetings at which the matter is scheduled for discussion, unless
20 counsel has previously been granted permission to withdraw by the Administrative Law Judge or the
21 Commission.

22 ...

23 ...

24 ...

25
26 ³ The date of receipt of discovery requests is not counted as a calendar day, and requests received after 4:00 p.m.
Arizona time will be considered as received the next business day.

27 ⁴ The parties shall attempt to settle discovery disputes through informal, good-faith negotiations before seeking
28 Commission resolution of the controversy. A party shall ensure that any motion to compel is accompanied by the
separate certification required by Arizona Rule of Civil Procedure 26(g) and 37(a)(2)(C) and that such a certification
could also be made at any requested procedural conference.

1 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
2 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
3 hearing.

4 DATED this 31st day of August, 2011.

6
7 
8 SARAH N. HARPRING
9 ADMINISTRATIVE LAW JUDGE

10 Copies of the foregoing mailed/delivered
11 this 31st day of August, 2011, to:

12 John Dougherty
13 P.O. Box 501
14 Rimrock, AZ 86335
15 jd.investigativemedia@gmail.com

16 William Nicholas Kopko
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18 Rimrock, AZ 86335

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By:


Debra Broyles
Secretary to Sarah N. Harpring